

RESOLUTION NO. 15-103

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, CONSIDERING CERTAIN REMEDIAL RECOMMENDATION WITH RESPECT TO THE FINDINGS RELATED TO THE CITY CLERK IN THE INDEPENDENT INVESTIGATION REPORT OF CREASON & AARVIG, LLP, DATED SEPTEMBER 14, 2015.

WHEREAS, the City of Carson (hereinafter the "City") has determined that it is essential for the proper operation of the City for the public to have confidence in the integrity of its local government; and

WHEREAS, the City has adopted a Code of Ethics as part of its Municipal Code through City Ordinance, Municipal Code section 2450, which establishes ethical standards for all City officials, including elected officials; and

WHEREAS, the City's Code of Ethics establishes that an elected official's responsibilities include compliance with federal, state and local laws, and that an elected official's conduct in his official affairs should be above reproach and avoid the appearance of impropriety; and

WHEREAS, the Code of Ethics provides that the City Council may take action in response to any violation of the Code of Ethics, including a resolution of censure; and

WHEREAS, on August 27, 2015, outside investigator Maria K. Aarvig, Esq., commenced an investigation into complaints made by various members of City staff related to conduct attributed to City Clerk Jim Dear, including allegations of discrimination, retaliation, creation of a hostile workplace and other alleged treatment of both City employees and non-employees, which if proven to be true could constitute multiple violations of the City's above-referenced Code of Ethics; and

WHEREAS, during the investigation, Investigator Aarvig interviewed thirteen (13) employees, including men and women of various races and from multiple departments within the City, gathered certain evidence, tested for corroboration the allegations made, and prepared a written report summarizing the results of this independent investigation; and

WHEREAS, no elected officials were interviewed; and

WHEREAS, the independent report prepared by Attorney Aarvig finds and concludes that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear has violated the above-referenced Code of Ethics; and

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take

immediate remedial action from which the City Council could make findings that City Clerk Jim Dear fostered, encouraged, and promoted racial division and animosity within work environment; and

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear regularly and pervasively made offensive and insulting remarks about nonwhite staff and elected officials, using terms such as "incompetent," "scumbag," "unprofessional," "liar," "corrupt," "evil," "stupid," "just no good," referring to someone as "an asshole" and commenting on hair in a racially derogatory context; and

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear's public *persona* is entirely different from the way he behaves towards staff; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear has angry outbursts, becomes agitated and red-faced, and behaves erratically and unpredictably in the workplace, resulting in staff being afraid of Mr. Dear and not knowing how far his behavior will go; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City staff feel unsafe in the workplace because of concern that City Clerk Jim Dear could just "snap" or go "Postal" and that he is unstable to the point there is a fear he could become violent; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City staff feel so shaken after confrontations with City Clerk Jim Dear in the office as to become physically ill or emotionally distraught; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City staff from multiple departments are concerned enough about personal safety that they have planned an escape route in case of an outburst by City Clerk Jim Dear; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear threatens City staff with termination; bullies, threatens and intimidates staff; uses others to spy on City staff or does it himself; puts staff in the middle of conflicts with members of City

Council or the City Manager; takes out his frustrations on staff and embarrasses and humiliates them in front of others; and interferes with the work of City staff; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear manipulated City staff into hiring his girlfriend, Monette Gavino and thereafter mistreated Ms. Gavino in front of City staff; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear treats non-blacks with favoritism, such as directing that an employee be given a raise "because he's white;" avoids giving work assignments to black employees; has insisted that a black employee be terminated if a white employee is terminated, regardless of performance; and criticized recommendations for black candidates to key positions because they were black; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make that City staff actively avoids City Clerk Jim Dear, including avoiding eye contact and staying behind locked doors as much as possible; and,

WHEREAS, the independent report prepared by Attorney Aarvig further that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City staff fears being caught alone with Mr. Dear; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City staff has a widespread fear of retaliation for speaking out against Mr. Dear; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that City Clerk Jim Dear's conduct towards City staff creates a potential liability for the City, is inconsistent with federal and state law and City policy, and given the number of complaining parties and the frequency of the offensive conduct, could be found to be severe and pervasive; and,

WHEREAS, the independent report prepared by Attorney Aarvig further found that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action from which the City Council could make findings that an atmosphere of fear of retaliation and retribution exists among City staff; and,

WHEREAS, as an elected official, the City Clerk is not subject to the same rules and restrictions applicable to City staff, although the conduct of an elected official in the workplace subjects the City to the same liabilities; and,

WHEREAS, it has come to the City Manager's attention that Mr. Dear had, without the permission of the City Council or City Manager, brought in a lock-smith during none City Hall hours and had changed the key and lock to the office of the City Clerk without providing a copy or notice to anyone of doing same; and,

WHEREAS, pursuant to the City's municipal code, section 2107(l), the City Manager has the full authority to exercise general supervision over all public buildings, including the City Hall; and,

WHEREAS, as an elected official, the City Clerk is not subject to the same rules and restrictions applicable to City staff, although the conduct of an elected official in the workplace subjects the City to the same liabilities; and,

WHEREAS, irrespective of the fact that the City Clerk is not subject to the same rules and restrictions applicable to City staff, the City still owes an affirmative duty to its employees pursuant to federal and state law, including but not limited to Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Federal Whistleblower Protection Act, the California Fair Employment and Housing Act, the California Labor Code, including Labor Code section 1102.5, and the California Whistleblower Protection Act; and,

WHEREAS, the current employees in City Clerk's office are employees of the City, who ultimately answer to the City Manager. The City Manager has the power and duty "[t]o control, order, give directions to, appoint, promote, discipline and demote or remove all heads of groups and divisions, except the City Clerk, the City Attorney, and the City Treasurer, and all subordinate officers and employees of the City . . . [and] [t]o exercise control over and to supervise in general all groups and divisions of the City Government and all appointive officers and employees thereof except the City Clerk, the City Attorney, and the City Treasurer." CMC § 2107(b),(c); and,

WHEREAS, the City Council will hold a hearing on October 20, 2015 to consider the possibility of publicly censuring the City Clerk ("Censure Hearing").

NOW, THEREFORE, be it resolved by the CITY COUNCIL of the CITY of CARSON, CALIFORNIA, as follows:

Section 1. The foregoing recitals are true and correct and are incorporated by reference herein.

Section 2. The City Council finds and determines that sufficient information has been conveyed to give rise to a duty on the part of the City to take immediate remedial action and that City Clerk Jim Dear has engaged in conduct that has potentially violated the City's Code of Ethics, conduct that potentially violated federal, including Title VII of the Civil Rights Act of 1964 and conduct that potentially violated state law, including California's Fair Employment and Housing Act, and is inappropriate and unacceptable for a public official representing the City of Carson.

Section 3. In light of this, the City Council has initiated a process which will afford the City Clerk an opportunity to respond to the evidence contained in the independent investigator's report prior to taking any possible City Council action to censure him and/or to formally counsel him to seek professional psychiatric assistance regarding his alleged behavior noted in the independent investigator's report.

Section 4. While lacking the legal authority to place the elected City Clerk on administrative leave pending completion of the investigation into his alleged conduct, the City Council does have authority and hereby directs the City Clerk as follows: (1) the City Clerk shall adhere to all existing City's rules, regulations, policies, and standard municipal practices ("SMP"s); (2) the City Clerk shall adhere to all federal and state laws in his dealings with City staff, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Federal Whistleblower Protection Act, the California Fair Employment and Housing Act, the California Labor Code, including Labor Code section 1102.5, and the California Whistleblower Protection Act; and (3) the City Clerk shall attend a City provided training program on his supervisory responsibilities over City employees, such training to be completed within 30 days of the effective date of this resolution and the same to be provided through the Human Resources Department of the City at no expense to the City Clerk.. It is important to note this training is necessary in light of the unique position of an elected City Clerk wherein he directly supervises staff at times.

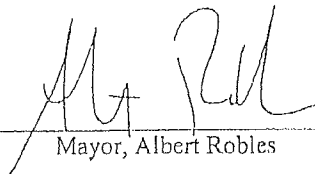
Section 5. The City Council hereby prohibits the City Clerk, or anyone one acting for or on his behalf, from communicating directly, or indirectly, with any member of City staff about such staff members' actual or perceived participation in, interview for, or providing information to, the City's independent investigator regarding the alleged conduct or other actions of the City Clerk noted hereinabove.

Section 6. The City Manager has determined that it is necessary for him to take the following actions until such time that the Censure Hearing is held: (1) bar the City Clerk from direct supervision of, or directing the performance of the duties of, any member of City staff including City employees assigned to the Office of the City Clerk; and (2) to exercise his sound discretion in implementing necessary directives, recognizing that, by law, the City Manager has the power and duty "[t]o control, order, give directions to, appoint, promote, discipline and demote or remove all heads of groups and divisions, except the City Clerk, the City Attorney, and the City Treasurer, and all subordinate officers and employees of the City . . . [and] [t]o exercise control over and to supervise in general all groups and divisions of the City Government and all appointive officers and employees thereof except the City Clerk, the City Attorney, and the City Treasurer." CMC § 2107(b),(c). Consistent with this section, the City Manager is afforded the exercise of his sound discretion in his supervision of City employees assigned to the Office of the City Clerk, including, as appropriate, directing such staff to report to him directly and to take directive from him exclusively until such time that the City Manager deems it otherwise appropriate. However, the City Council directs the City Manager to assure that sufficient staff assistance is provided through the City Manager's office to the City Clerk to permit the City Clerk to discharge his statutory duties.

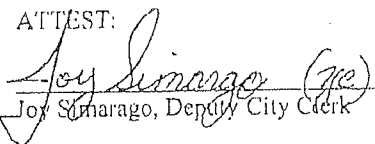
Section 7. The City Council further directs the City Manager to change the lock(s) on the City Clerk's office(s) so as to permit the City Manager access to all City offices, including all offices in the area where City staff work with the City Clerk.

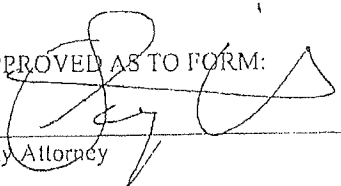
Section 8. Pursuant to municipal code section 2107(1), the City Manager has the full authority to exercise general supervision over all public buildings, including the City Hall. The City Manager has determined out of concern for his employees and based on a modified version of the recommendation of the independent investigator Attorney Aarvig, that until such time that the Censure Hearing is held absent the advance authorization of the City Manager, the City Clerk be barred from access to all non-public and/or restricted areas of City Hall, with the exception of access to the Office of the City Clerk and its environs. The City Council directs the City Manager to assure that there is sufficient access to such non-public and/or restricted areas of City Hall to permit the City Clerk to discharge his statutory duties.

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council on this 17th day of September, 2015.



Mayor, Albert Robles

ATTEST:

Joy Samarago, Deputy City Clerk

APPROVED AS TO FORM:


City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, JOY SIMARAGO, Deputy City Clerk of the City of Carson, hereby attest to and certify that the foregoing resolution is the original resolution adopted by the Carson City Council at its special meeting held on the 17th day of September, 2015, by the following vote:

AYES:	COUNCIL MEMBERS:	Mayor Robles, Davis-Holmes, Hilton, and Gause
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	Santarina
ABSENT:	COUNCIL MEMBERS:	None

Joy Simarago (ye)
Joy Simarago, Deputy City Clerk